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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 864.

CHARLEY WILLIAMS, DONALD L. WASHINGTON, WILLIAM JONES, *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The Petitioners herein, respectfully pray for writ of certiorari to review the decision and judgment of the United States Court of Appeals for the District of Columbia, entered on December 17, 1963, to which Motion for Re-Hearing was made and denied by United States Court of Appeals for the District of Columbia Circuit on January 24, 1964.

THE OPINION BELOW

The opinion-order of the United States Court of Appeals for the District of Columbia Circuit has not been reported. The opinion-order has been printed in the Appendix.

JURISDICTION

Jurisdiction to issue the writ is found in the provisions of Judicial Code as same are set forth in 28 U.S.C.A., Sec. 1254(1).

QUESTIONS PRESENTED

I

It was error for the Trial Court to hold that a search warrant for the entire premises was not a general warrant, when others were living in the premises and not associated with the alleged unlawful venture.

II

It was error for the Trial Court to hold that an arrest warrant for the defendant, William Jones, was sufficient in Law, where the probable cause suggested was only by reference to a distinct and separate document, i.e. the aforementioned search warrant and the probable cause thereto set forth.

III

It was error when the above mentioned warrant of arrest for William Jones was executed in the back yard of the premises searched, to then bring the said William Jones under the arrest warrant into the house where certain suggested contrabrand gambling equipment had been seized under the search warrant.

STATUTE INVOLVED

Title 5 Section 312-D. of C. Code 1961 (Ed)

Amendment IV—Constitution of the United States, Searches and Seizures:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

On August 1, 1962, the Morals Division of the Metropolitan Police Department (District of Columbia) after alleged observations for approximately eight days, obtained and served Search Warrant on premises 134 R Street, N.E., Washington, D.C. The Search Warrant for the said address was requested for the entire premises. The appellants Jones and Washington were arrested in the back yard on arrest warrants by certain of the police at a time when other police were searching the above-mentioned premises under the alleged search warrant, which was obtained the same day as the arrest warrants. Jones and Washington were taken to the basement of the premises (Tr. 126). The Appellant Williams was found in a closet on the first floor and was also removed to the basement (Tr. 127). At one time or another an officer was in every room of the house. (Tr. 155). As indicated by Officer Goldston "during the extended search" (Tr. 156) the said Goldston entered one room on the second floor where he found a man in bed at

which time he found no gambling paraphernalia in the room (Tr. 157). He removed the man to the basement (Tr. 158). The man informed the officer that he lived there (Tr. 159). Bernice Blandon, a co-Defendant below, testified that her daughter also lived in the premises (Tr. 201). Sgt. Lockwood testified that Bernice Blandon had been upstairs during the search of the first and second floors and that after the search was completed she was brought to the basement (Tr. 220). Lockwood asked if she had a rooming license and was informed that while she had roomers there she had no license (Tr. 220). The said officer told her he did not think everyone that was in the premises was involved. (Tr. 221). He asked Blandon if one of the roomers, Freeman Davis, was involved and she stated he wasn't, that he was employed by the government (Tr. 222). She was questioned about another roomer, Louise Colbert, and she advised the officer that this party was only a roomer in the house. The officer then in the presence of Bernice Blandon asked Miss Colbert if that was right and she said, "That is correct" (Tr. 222). The said officer further testified that he talked to two roomers and Bernice Blandon's daughter after they had searched the first and second floors (Tr. 226). The said officer stated that the roomer, Louise Colbert, was in the back yard at the time of the raid and he saw Officers Durham and Goldston bringing Jones and Washington down the basement steps. (Tr. 238).

Motions to suppress evidence seized under the Search Warrant were heard by the Trial Court and overruled as to all Appellants.

In addition, Motion on behalf of Appellant William Jones was made on the basis that he was not arrested at the premises searched but in the back yard

under a warrant of arrest issued without adequate probable cause. Both Motions were overruled by the Trial Court and all the alleged contrabrand evidence in the basement and found under the search warrant was considered by the Trial Court against the Appellant Jones who had been brought into the premises after his arrest in the yard on the warrant of arrest.

At the time of the arrest in the back yard no evidence of a contraband nature was found on or about the Appellant Jones (Tr. 126, 141).

CONSTITUTION AND RULES INVOLVED

1. Amendment IV—Constitution of the United States, Searches and Seizures

2. Rule 41 (*e*) (e) Federal Rules of Criminal Procedure

REASONS URGED FOR ALLOWANCE OF THE WRIT

I

It Was Error for the Trial Court to Hold That a Search Warrant for the Entire Premises Was Not a General Warrant, When Others Were Living in the Premises and Not Associated With the Alleged Unlawful Venture

Petitioners respectfully represent to the Supreme Court of the United States that the search warrant issued by the United States Commissioner on August 1, 1962 was a general one and as such was in violation of the mandate of the Fourth Amendment of the Constitution of the United States. It did not "particularly" describe the premises searched.

As set forth in the application for the search warrant, and on the face of the warrant itself, the "entire premises" 134 R Street, N.E., was the object of the

search. The evidence at the trial disclosed that the "entire premises" was not being used unlawfully; that there were others living in the house not associated in an unlawful enterprise, and that the officers did not know where in the premises appellants were to be found; and that a general search was conducted.

As described by Officer Goldston, at one time or another, an officer was in every room in the house (Tr. 155), during the "extended search" (Tr. 156). The testimony discloses that the occupants of the premises were herded from the first and second floors, as well as the back yard, to the basement where they were interrogated concerning their participation, if any, in the alleged numbers operation. One man, for instance, was found in bed on the second floor, his room was searched and he was taken to the basement (Tr. 157-158). It developed that he was a government employee on a day off (Tr. 222). Sgt. Lockwood asked Bernice Plandon if she had a rooming house license, and was informed that while she had roomers there, she had no license (Tr. 220).

The fact is that although she had some roomers and other members of her family living at the premises, she did not have ten roomers as is provided for in Title 5 Section 312 D. of C. Code 1961 (Ed) which in its appertaining paragraph provides as follows:

> "(b) The term 'rooming house' names a building in which rooms are rented and sleeping quarters provided to accommodate ten or more persons, not including the family of the owner or lessee."

It is apparent from the evidence that the warrant was a general one and an exploratory search of the premises was conducted. It is also obvious that the "entire premises," was not being used unlawfully.

In *United States* v. *Epstein*, 33 F. 2d 982, with respect to a warrant for the entire premises, where there were others not associated with the unlawful enterprise, the Court stated:

> "Suppose in the proceeding herein, the warrant had issued not to the agent who made application therefor, but to some other agent or officer, would the warrant, in such circumstances, have been sufficiently intelligible and definite on its face to enable such officer to make a reasonable search within the limits of the Fourth Amendment and the statute? Clearly not. Such agent would have been compelled under the command of the warrant to search the premises of innocent occupants of the loft building. It follows such a search would have been unlawful."[1]

In the instant case the warrant was not sufficiently intelligible and definite on its face to enable the officers who obtained the warrant, to conduct a "reasonable" search within the limits of the Fourth Amendment. Certainly, the procedure followed by the raiding officers in this case, under the protection of a "general" warrant could not be defined as "reasonable". It is no answer to exploratory searches to say that in order to become immunized to warrants for "entire premises," gambling violators could set up in a house with a few roomers and obtain maximum protection. The local District Court and Court of Appeals have reviewed cases which were predicated on warrants for "basement" of designated premises as well as for "first" or "second" floors in private homes. In such cases at least, the applying officers made some effort to "localize" the alleged misconduct, and certainly must

[1] See also U. S. v. Hinton (7th Cir.), 219 F. 2d 324, 326.

have been aware that "entire premises" warrants were too general, otherwise, designation of a certain portion of the premises would have been omitted.

The same objection was taken to the warrant in *Minoritz* v. *United States*, 112 U.S. App. D.C. 21, 298 F. 2d 682, and in discussing the objection the local Court of Appeals stated:

> "Appellant contends this warrant was invalid because the premises were occupied by other persons who were apparently not associated with the unlawful venture. But, the police, on two occasions had made inquiry as to the occupancy of the building and on both occasions their investigation had revealed that the house was a private dwelling and not an apartment or rooming house."

Concededly there was no such "investigation" conducted here to determine whether the privacy of others would be invaded in obtaining a general warrant.

Again, it is respectfully urged, that the term "rooming house" should not be controlling, where, as here, the roomers were not of sufficient numbers to require a rooming house license. On the other hand, if it appeared there were ten (10) roomers within the premises, a violation of the rooming house statute by the operator should not give comfort to officers of the law in by-passing the mandate of the Fourth Amendment.

The local United States Court of Appeals upheld the seizure of the evidence in *Minoritz* on the further ground that the evidence was found in the room in which appellant was arrested and was, therefore, incident thereto. Here, none of the appellants were arrested in the basement of the premises where the evidence was seized and the alleged operation was supposedly conducted.

In *Shore* v. *United States*, 49 F. 2d 519, 60 App. D.C. 137, it was argued that the premises actually consisted of defendant's garage and tire shop and also a small lunch room occupied by someone else. The local Appellate Court stated:

> "It is admitted on the record that the defendant Shore owned the whole building, and it satisfactorily appears that neither the lunchroom nor the upstairs was searched."

Thus, *Shore*, is distinguishable here, for in the instant case the entire premises was searched, nor was there evidence here that the instant premises were owned by those involved.[2]

II

It Was Error for the Trial Court to Hold That An Arrest Warrant for the Defendant, William Jones, Was Sufficient in Law, Where the Probable Cause Suggested Was Only By Reference to a Distinct and Separate Document, i.e. the Aforementioned Search Warrant and the Probable Cause Thereto Set Forth

The Affidavit on which Arrest Warrant for Jones was based was insufficient in Law.

The only attempt at setting forth probable cause in the arrest of Appellant Jones was the following:

> "And the complainant states that this complaint is based on the facts set forth in the Affidavit attached to Search Warrant in Comm.'s Docket 6 Case 73 and made a part hereof". (R Arrest Warrant for William Jones.) The Affidavit attached to Search Warrant did state that the Appellant was seen going in and out of premises 134

[2] U. S. v. Santore, 290 F. 2d 51 (2nd Cir.), cited by U.S.C.A. in its opinion, factually different.

R Street, N.E., on certain occasions in some instances with bulging pockets."

It is to be noted, however, that the Affidavit covered four (4) pages and was mainly concerned with alleged activities of others than the Appellant Jones. (See copy of search warrant in Appendix to Appellee's Brief included in designation of record).

It is fundamental that not only as to a Search Warrant, but likewise as to Warrant of Arrest, that the existence of probable cause must be set forth to justify the issuance of the Warrant, and not by way of reference particularly when it involves so many other people.

It is likewise fundamental that an individual cannot be arrested or charged for the alleged criminal act of others unless such is shown to be in fact a joint enterprise.

In the case of *Schoeneman & Markham, Jr. v. United States*, 317 F. 2d 173, 115 U.S. Appeals D.C. 110, the United States Court of Appeals for the District of Columbia stated:

> "But where, as here, the Commissioner's judgment is predicated solely on Affidavits, the Court is not relieved from making its own judgment as to whether the Affidavits provide a 'substantial basis' for him to conclude that (the evidence was) probably present in the (home). Jones v. U.S., 362 U.S. 257, 271 (1960).

In the case of *Wong Sun, et al. v. United States*, 9 L. ed. 2d pp. 441, in a comprehensive discussion of the subject matter of probable cause this Court in its opinion on page 479 stated:

"It is basic that an arrest with or without a warrant must stand upon firmer ground than mere suspicion."

In the same case (supra) this Court further stated:

"The history of the use, and not infrequent abuse, of the power to arrest cautions that a relaxation of the fundamental requirements of probable cause would 'leave law abiding citizens at the mercy of the officers' whim or caprice.'"

It is interesting to note that the Trial Judge in the instant case when the Wong Sun, et al. case (supra) was called to his attention observed:

"I must admit that the opinion shakes me." (Tr. 22)

III

It is further urged on behalf of Appellant Jones that even if the warrant should be construed as having issued on "probable cause", it is a conceded fact of record that the arrest on the said warrant occurred in the yard back of the premises searched and at a time when the Petitioner Jones was not present in said house.

Also to be noted is the conceded fact that after the officer served the arrest warrant on the Petitioner Jones there was no search of the person of Jones made or the immediate vicinity of the location where Jones was arrested.

It certainly would appear unnecessary to cite the well established Law to the effect that under an arrest with or without warrant, even if such arrest is construed as being legal, that the officers are limited in

their scope of search to the person of the individual and his immediate vicinity.

In the case of *Carlo v. United States*, 286 F. 2d 841, 846:

> "But every time there is delay in the making of the arrest and there is a search made as incidental to the arrest, the law enforcement officers take the risk that they will be charged with using the arrest as a mere pretext for the search. U.S. v. Lefkowitz, 1932, 285 U.S. 452, 76 L. Ed. 877 and other cases"

In *Gilbert v. United States*, 291 F. 2d 586 the Court points out that:

> "the search of the combined office and home and the garage of the defendant, an accountant, in connection with an arrest for forgery of a single check, which was in possession of government, was unreasonable, where a government agent allegedly maneuvered to make the arrest in the accountant's home, and no offense was committed in the presence of the arresting agents."

In the case of *Collins v. United States*, 289 F. 2d 129 the Court of Appeals for the Fifth Circuit upheld that:

> "Even if arrest by state officers was valid, it came to end when defendant was confined on nonexistent charge and subsequent search of defendant's vehicle and suitcase could not be justified as incident to lawful arrest and unregistered sawed-off shotgun found in search was required to be suppressed and could not form basis for federal prosecution."

This case points up as do the others the fundamental fact that the search must be incident to the arrest.

One of the Judges participating in the decision of the instant case at the U. S. Court of Appeals for the D.C. Circuit was former Chief Judge of that Court and now Senior Circuit Judge of the said Court. It is most enlightening to note the fact that this same Judge in *McKnight* v. *United States*, 87 U.S. App. D.C. 151, 183 F. 2d 977 in a very well considered opinion in discussing the very fundamental fact previously urged (*supra*) that an arrest may not be used as a pretext to search for evidence. In addition at page 152 of said Opinion stated:

> "'Police Strategem', waiting until McKnight was in a locked house before arresting him justified the police in breaking into the house in order to arrest him and seize evidence. We think this untenable. 'The right to break open a door to make an arrest requires something more than the mere right to arrest'".

It is again pointed out that the Petitioner Jones was arrested in the yard under the circumstances that the arresting officer knew that the other officers had already entered the premises under the search warrant and without any search of Jones at the point of arrest brought him into the house and into the presence of the gambling paraphenalia that was then being seized.

Senior Judge Edgerton in his opinion in the McKnight case (supra) quoting from the Rabinowitz case in the Supreme Court said:

> "The relevant test [] * * * whether the search was reasonable. That criterion in turn depends upon the facts and circumstances—the total atmosphere of the case. United States v. Rabinowitz, 339 U.S. 56, 66, 70 S. Ct. 430, 435."

See also:

Lee v. *United States*, 98 U.S. App. D.C. 97, 232 F. 2d 254.

Staker v. *United States*, 5 F.(2d) Sixth Cir. 312.

CONCLUSION

For the reasons set forth herein it is sincerely urged to this Court that the Writ of Certiorari to the United States Court of Appeals for the District of Columbia should be granted to permit a full review of the contentions made in this case.

Respectfully submitted,

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